

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**THREE WISE MEN ENTERPRISES  
LLC D/B/A 4D SIGNWORX, LTD**

Plaintiff,

v.

**UNITED STATES OF AMERICA,**

Defendant.

**JURY DEMAND**

Civil Action No.

**COMPLAINT**

Three Wise Men Enterprises LLC d/b/a 4D Signworx, LTD (“Plaintiff”) files this Complaint seeking a refund of federal employment taxes paid to the United States of America (“Defendant”), plus interest thereon according to law, and in support thereof states as follows:

**NATURE OF THE CASE**

1. On or about March 27, 2020, in response to the COVID-19 pandemic, Congress passed the Coronavirus Aid Relief and Economic Security Act (“the CARES Act”).
2. The CARES Act created a refundable tax credit named the employee retention credit (“E.R.C.”) for eligible wages paid between March 12, 2020, and December 31, 2020.
3. On or about December 27, 2020, Congress passed the Consolidated Appropriations Act (“C.A.A.”). The C.A.A. extended eligibility for E.R.C. through June 30, 2021. On or about March 11, 2021, Congress passed the American Rescue Plan Act (“A.R.P.A.”), which further extended E.R.C. eligibility through December 31, 2021.
4. There are several ways to qualify for the E.R.C., all aimed at incentivizing and rewarding businesses that retained employees during the COVID-19 pandemic in 2020 and 2021. For example, businesses that demonstrated certain statutorily defined reductions in gross receipts, as

compared to pre-pandemic periods, were eligible for a per employee refundable E.R.C. for applicable quarters. Businesses meeting certain defined business disruption criteria by quarter were also eligible for the per employee refundable E.R.C. by applicable quarter.

5. The Internal Revenue Service directed employers to claim the E.R.C. on Forms 941-X (Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund), which takes the form of a refund of employment taxes in the amount of the E.R.C.

6. Plaintiff qualified for the E.R.C. for the time periods and in the amounts at issue, and followed the instructions of the I.R.S. in timely claiming the E.R.C. for such periods. Specifically, on or about August 21, 2023, Plaintiff submitted an E.R.C. claim of \$259,363 for tax quarter ending March 31, 2021, and \$245,868 for tax quarter ending June 30, 2021.

7. The I.R.S. received the foregoing E.R.C. claims on or about August 31, 2023.

8. On or about September 14, 2023, the I.R.S. announced a moratorium through, at a minimum, the end of 2023 on all new E.R.C. claims filed by all employers.

9. As of July 15, 2024, the date of the filing of this Complaint, Plaintiff's E.R.C. claims for the periods at issue still have not been paid by the I.R.S., nor has the I.R.S. signaled to Plaintiff that it has even begun to review its claims, even though Plaintiff filed its E.R.C. claims before the moratorium, which has since ended, and the funds are due on said claims.

10. Plaintiff brings this civil action under the internal revenue laws of the United States to seek the Court's intervention to compel the I.R.S. to review and pay the E.R.C. claims at issue (which take the form of a refund of employment taxes).

## **PARTIES**

11. Plaintiff Three Wise Men Enterprises LLC is a domestic Limited Liability Company (“LLC”) with its principal place of business in Houston, Texas. Plaintiff’s assumed name under which its business is conducted is 4D Signworx, LTD.

12. Defendant is the United States of America. Service of process may be made on Defendant to the following:

- a. Merrick Garland  
Attorney General of the United States  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001
- b. Civil Process Clerk  
Office of the United States Attorney for the Southern  
District of Texas  
1000 Louisiana Street, Suite 2300  
Houston, Texas 77002
- c. Daniel Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224-0001

## **JURISDICTION AND VENUE**

13. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1346(a)(1), 1340 and 26 U.S.C. §7422 because this is a claim for refund and action against the United States for the recovery of erroneously assessed and collected internal revenue taxes. Venue is proper in the United States District Court for the Southern District of Texas, Houston Division, under 28 U.S.C. § 1402(a), because Plaintiff’s principal place of business is in Houston, Texas.

## **RELEVANT BACKGROUND**

14. Plaintiff incorporates all previously stated paragraphs as if fully set forth herein.

15. Plaintiff is a local Houston sign company that provides indoor and outdoor sign design, manufacturing, and installation services for signage projects.

16. Plaintiff continued, on a reduced and impacted basis, to provide indoor and outdoor sign services throughout the COVID-19 pandemic during 2019 through 2021.

17. Plaintiff employed on average 100 or fewer full-time employees during 2019 through 2021.

18. Plaintiff paid wages to its employees from 2020 through 2021 and timely reported employment taxes for such wages on Form 941 for each relevant quarter.

19. Plaintiff meets all requirements to qualify for the E.R.C. on wages paid to its employees for employment tax quarters ending March 31, 2021, and June 30, 2021.

20. Plaintiff is an eligible employer, and wages it paid are qualified wages, under all applicable statutory provisions including but not limited to the Internal Revenue Code and the CARES Act as amended.

21. Plaintiff's gross receipts for the employment tax quarter ending March 31, 2021, were less than 80 percent of the gross receipts for the same employment tax quarter in 2019.

22. On or about August 21, 2023, Plaintiff submitted an E.R.C. refund claim on Form 941-X for the amount of \$259,363 for employment tax quarter ending March 31, 2021. Because gross receipts were less than 80 percent of gross receipts for the same employment tax quarter in 2019, Plaintiff was an eligible employer within the meaning of the E.R.C. Plaintiff computed the E.R.C. on qualified wages for employment tax quarter ending March 31, 2021.

23. On or about August 21, 2023, Plaintiff submitted an E.R.C. refund claim on Form 941-X for the amount of \$245,868 for employment tax quarter ending June 30, 2021. On such Form 941-X, Plaintiff elected to use the alternative quarter test. Because gross receipts for the

immediately preceding quarter were less than 80 percent of gross receipts for the corresponding employment tax quarter in 2019, Plaintiff was an eligible employer within the meaning of the E.R.C. Plaintiff computed the E.R.C. on qualified wages for employment tax quarter ending June 30, 2021.

24. The E.R.C. claim for the employment tax quarters ending March 31, 2021, and June 30, 2021, were received by the I.R.S. on or about August 31, 2023.

25. Plaintiff maintained adequate and accurate documentation to support the qualification and quantification of the E.R.C. including the determination of gross receipts for the employment quarters provided above.

26. As of July 15, 2024, the date of the filing of this Complaint, Plaintiff has not received payment of any refund claim.

27. Pursuant to the foregoing, the I.R.S. has failed to fulfill its duty by holding the funds related to Plaintiff's E.R.C. claim without justification.

#### **COUNT ONE – CLAIM FOR REFUND**

28. Plaintiff incorporates the previously stated paragraphs as if fully set forth herein.

29. Plaintiff is entitled to its E.R.C. claims for the employment tax quarters ending March 31, 2021, and June 30, 2021, which claims were filed on or about August 21, 2023, and remain unpaid by the I.R.S.

30. Before August 21, 2023, Plaintiff filed Form 941 and paid all amounts due for the employment tax quarter ending March 31, 2021. In total, Plaintiff paid \$148,295.15 in employment tax to the I.R.S. for the employment tax quarter ending March 31, 2021.

31. Before August 21, 2023, Plaintiff filed Form 941 and paid all amounts due for the employment tax quarter ending June 30, 2021. In total, Plaintiff paid \$151,317.80 in employment tax to the I.R.S. for the employment tax quarter ending June 30, 2021.

32. On or about August 21, 2023, Plaintiff filed Forms 941-X for the employment tax quarters ending March 31, 2021 and June 30, 2021, to claim refunds related to the E.R.C. to which Plaintiff was lawfully entitled in the total amount of \$505,231.

33. Plaintiff filed its claim for refund within three years of filing the return as specified in I.R.C. § 6511.

34. Plaintiff's suit under I.R.C. § 7422(a) is filed in accordance with I.R.C. § 6532(a)(1); *i.e.*, more than six months have elapsed since the filing of Plaintiff's Form 941-X claims for refund with the I.R.S.

35. Plaintiff is due a refund of its E.R.C. for federal employment tax for the quarters ending March 31, 2021, and June 30, 2021, is the sole owner of the claim for refund, and has made no assignment of its claim.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that citation be issued and served as provided by law; for judgment for Plaintiff against Defendant in the amount of at least \$505,231, plus interest thereon according to law; for court costs, witness fees, and attorneys' fees; and for such other relief to which Plaintiff may be entitled. Plaintiff requests a jury trial for all issues triable by a jury pursuant to Federal Rule of Civil Procedure 38(b).

Dated: July 15, 2024

Respectfully Submitted,

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